REMARKS

This communication responds to the Final Office Action mailed December 22, 2005.

In the present communication, applicant has amended claims 5, 6, 12, 26, 36, and 38. No new subject matter has been added to the claims.

Claims 1, 4, 16, 19, and 29-35 have been canceled. Therefore, claims 2-3, 5-15, 17-18, 20-28, and 36-44 are pending.

Amendment of or cancellation of the claims has been done to help expedite the prosecution of the invention and to put the claims in a condition for allowance or appeal. Applicant reserves the right to pursue the original claims in this or a continuation application. Incorporation of the subject matter of certain independent claims from previous communications, i.e. claim 1 in to claim 5 in the October 12, 2005 Response, should not be construed as limiting and all equivalents of the original unamended independent claim are incorporated in to the subsequently amended claim.

With respect to the amendment of independent claim 5, the amendment particularly points out and distinctly claims "depositing a suspension compound over said IQF fruit in said pie shell to form a suspension of IQF fruit and suspension compound," which clarifies the suspension of IQF fruit and suspension compound.

The §§ 112, second paragraph and 103(a) rejections of the claims are respectfully traversed in view of the above amendments because the cited references, alone, or in combination, do not disclose or suggest a method for manufacturing a pie filled with IQF fruit or an end product of a pie filled with IQF fruit that includes "adding individually quickly frozen ("IQF") fruit into said pie shell; [and] depositing a suspension over said IQF fruit in said pie shell," as required by the independent claims. In addition, the cited references fail to disclose a suspension having "a range of about 38% to about 88% liquid sweetener, a range of about 5% to about 55% dry sweetener, a range of about 4% to about 15% food starch; and a range of about 0.01% to about 5.0% food gum," as required by at least the independent claims.

Applicant's amendments to the claims should not necessitate new grounds of rejection as the claims are amended for clarity. Applicant therefore respectfully requests that the amendments be made of record either for allowance or in the absence thereof, for appeal purposes.

Rejection of Claims 6, 12, 26, 38 and 42 under 35 U.S.C. § 112, second paragraph

Claims 6, 12, 26, 38, and 42 were rejected under 35 U.S.C. 112, second paragraph. The § 112 rejection of the claims is respectfully traversed. However, in order to expedite prosecution, claims 6, 12, 26, 38, and 42 have been amended

In particular, claim 6 has been amended to particularly point out and distinctly claim "The method according to claim 5," which corrects claim dependency.

Claim 12 has been amended to particularly point out and distinctly claim "wherein depositing said starch and gum over the IQF fruit prior to baking creates a glossy smooth appearance upon the finished frozen fruit pie filling."

Claims 26 and 42 have been amended to particularly point out and distinctly claims "wherein depositing said starch and gum over the IQF fruit prior to baking creates a glossy smooth appearance upon the finished filling of the pie filled with frozen fruit."

Claim 38 has been amended to particularly point out and distinctly claim "continuing execution of said mixing and dry ingredient adding steps until said dry ingredients are uniformly distributed into said liquid sweetener." Support for the amendment can be found, for example, at paragraph 23 of the application.

These amendments address the § 112 rejections without adding new matter.

Reconsideration and withdrawal of the § 112 rejections are requested.

Rejection of Claims 1-2, 3,, 5-15, 17, 18, 20-28 and 36-44 under 35 U.S.C. § 103(a)

Claims 1, 2, 3, 5-15, 17, 18, 20-28 and 36-44 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Office Action's assertion of admitted prior art in view of U.S. Patent No. 6,562,385 Neumann (hereinafter "Neumann") in view of U.S. Patent No. 4,623,542 Wallin et al. (hereinafter "Wallin").

The § 103(a) rejection is respectfully traversed for at least the following reasons.

The cited references, alone or in combination, fail to disclose or suggest the requirements of the independent claims.

The alleged admitted prior art is respectfully traversed. According to the MPEP § 2129, "Where the specification identifies work done by another as 'prior art,' the subject matter so identified is treated as admitted prior art."

However, the present application does not indicate anywhere that the prior art is work done *by another* as required by MPEP § 2129. Instead, it is Applicants who are aware of previous production methods and pie products because Applicants are in the business of producing pies, among other products. Thus, Applicants indicate that the methods and products are known. For example, Applicants state in the specification, "[i]n a third known method of production, the fruit is cooked" and "each of the known prior art methods described above have various shortcomings."

The above statements are not an indication that the methods are known by others. Therefore, the prior art fails to disclose the "steps of mixing ingredients to create a pie dough, form the dough into a shell, adding IQF fruit into the shell and applying a top sheet of pie dough over the pie shell" as asserted by the Office Action at page 2.

Because Applicants have clarified that the description of known methods are methods known by Applicants, and not by others, the prior art fails to disclose the recitations of at least the independent claims, and reconsideration and withdrawal of the § 103(a) rejection are requested.

The Office Action indicates that Neumann does not disclose IQF. (Office Action page 4.) The Office action also indicates that "The Wallin reference is only relied upon to show that the amount of starch in a filling composition can be adjusted to adjust the viscosity of the composition," and therefore too does not disclose IQF. Therefore, because the present application is not prior art, and neither Neumann nor Wallin disclose or suggest IQF, the recitations of at least the independent claims are not satisfied. Therefore, reconsideration and withdrawal of the § 103(a) rejection are requested. Because IQF is not disclosed or suggested by the prior art references, the element of depositing or adding a suspension over the IQF is also not disclosed or suggested by either Wallin or Neumann.

Moreover, the intended function of the flavoring product in Neumann is not compatible with the methods and products of the present invention. The flavoring products in Neumann are

intended to be "added to pre-baked cereal-based products, such as waffles, pancakes, corn breads, or other food products. When heated, these ready to eat food products have a taste, appearance, and texture similar to cooked cereal-based products prepared by conventional methods," col. 1, lines 15-20. The flavoring products may also be "interspersed within an interior crumb of the food product," col. 2, lines 5-6, and may be used as a topping on for inclusion with "fresh-baked or prepared food products by consumers," col. 11, lines 18-19. Using the topping of Neumann to arrive at the invention as claimed would defeat the purpose of Neumann because the topping in Neumann is designed to be used on pre-baked products, or to be used within an interior crumb of a food product. The suspension of the present invention is deposited over IQF fruit and pie dough. The pie dough is not baked until it reaches the consumer, in which case the suspension is already deposited on the dough. In addition, when the suspension is heated, it is not baked within an interior crumb of a food product. Therefore, the Office Action's use of Neumann fails to make a prima facie case of obviousness, and therefore reconsideration and withdrawal of the § 103(a) rejection are requested.

The filler used in Wallin also is not compatible with methods or products of the present invention. This is because Wallin focuses on product stability for products which are "going to be shipped after cooking, freezing, and then subjected to a subsequent thaw and toasting." Col. 3, lines 29-31. The suspension of the present invention is deposited over IQF fruit and pie dough. The pie dough is baked by the consumer, and once baked, is not shipped, frozen, and then subjected to subsequent thaw and toasting like Wallin. Therefore, the Office Action's use of Wallin fails to make a prima facie case of obviousness, and therefore reconsideration and withdrawal of the § 103(a) rejection are requested.

Furthermore, the present invention is of relative importance over the prior art. This is because the methods of the present invention result in an IQF fruit suspension where the IQF fruit is suspended in a suspension of liquid sweetener, dry sweetener, food starch, and food gum.

More specifically, each of the independent claims recites a suspension of IQF fruit where claim 5 recites,

> depositing a suspension compound over said IQF fruit in said pie shell to form a suspension of IQF fruit and suspension compound;

claim 20 recites,

> depositing a suspension over said IQF fruit in said pie shell, wherein said suspension creates a stable suspension of the suspension and the IQF fruit;

and claim 39 recites,

> A method for suspending frozen fruit in a pie filled with frozen fruit having ingredients of various specific gravities . . . adding said suspension over said IQF fruit in said pie shell, said suspension used to suspend said IQF fruit in a uniform distribution upon baking of said pie filled with frozen fruit.

In contrast to the present invention, Wallin focuses on creating a "unique stability at the interface of the [shell and the interior filling], which minimizes undesirable phenomena, such as moisture migration, color deterioration, dough sogginess, and flavor loss." Wallin Abstract.

In further contrast to the present invention, Neumann focuses on creating:

> food products that can be reconstituted for consumption [that] includes flavoring toppings and/or flavoring inclusions that closely simulate commercially available flavored table syrups and flavored toppings in appearance, flavor, and texture

Neumann Abstract.

Neither the known methods from the Applicants' application nor the prior art methods of Neumann or Wallin disclose the importance of having an IQF fruit suspension.

CONCLUSION

This application now stands in allowable form, and reconsideration and allowance are respectfully requested.

No fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief that may be required, or credit any overpayment to Deposit Account No. 04-1420.

Respectfully submitted,

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